

## COAL OPERATING AGREEMENT

THIS AGREEMENT made and entered into this 23rd day of June, 2008 by and between C.O.P. Coal Development Company, a Utah corporation, hereinafter referred to as "Owner", and Hiawatha Coal Company, Inc., a Utah corporation, hereinafter referred to as "Operator";

WITNESSETH, that:

In consideration of the covenants and agreements hereinafter contained, the parties hereto mutually and severally agree as follows:

Owner, in consideration of the royalties to be paid and conditions to be observed as hereinafter set forth, does hereby grant unto Operator the exclusive authority to operate and control the following described tracts of land, situated in the state of Utah, for the term of 3 years, beginning June 23, 2008, and extending to June 22, 2011 with an option to renew for 5 years, subject to terms agreeable to the parties:

See Exhibit "A" attached hereto and made a part hereof

1. USE OF PROPERTY

Operator shall have the exclusive right to, and use of the described property for purposes reasonably incident to the mining and removal of coal, including any existing underground workings or facilities heretofore placed in or upon the leased area. Operator shall also have unrestricted use of all access roads leading to and from the described property. Owner shall retain all other rights to the use of the property including, but not limited to, hunting, grazing, recreational, timber, oil and gas and other minerals and water rights.

2. SIGNING BONUS

Operator shall pay Owner a signing bonus of three million dollars (3,000,000), payable in ten equal installments of \$300,000, and an eleventh payment for the remaining balance owed for accrued interest and principle, each due on the 15<sup>th</sup> day of each month beginning on October 15, 2008. All payments will be applied first to interest then principle. The signing bonus shall not be construed as a royalty payment for any purpose.

3. ROYALTIES

Operator shall pay a royalty equal to the lesser of 8% or the maximum royalty

EXHIBIT "E"

AP EXHIBIT 184  
C.O.P. Coal  
Department  
Date 9-4-08 Rptr. AL  
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allowed by law of the average gross realization on every ton (2,000 lbs.) of coal mined and removed from the described premises. Said royalty is payable in addition to the royalty amounts payable on the federal and state leases. In computing the average gross realization, severance and or sales taxes shall not be considered as part of the sale price. The royalty on coal stockpiled shall not become due or payable until actual shipment of the stockpiled coal from the premises.

Operator shall, on or before the twentieth day of each month during the term hereof, pay to Owner all sums due to Owner hereunder for the preceding calendar month as shown by the statement to be furnished as hereinafter provided.

For any advance royalties paid by Owner on the Federal Coal Leases, Operator shall reimburse Owner for those advance royalties, in the amounts and at such times as they would become due in the course of mining the coal, had Owner not paid the advance royalties.

#### 4. INTEREST

Operator shall pay to Owner interest at the rate of 15% per annum, compounded annually, on all amounts due to Owner under this or any other agreement between Operator and Owner including, but not limited to, the unpaid signing bonus due under this agreement. All payments will be applied first to interest, then to principle.

#### 5. SECURITY INTEREST GRANTED

Operator grants Owner a security interest in all of Operator's assets, income, cash, cash equivalents, and other proceeds obtained in full or part from Operator's use or possession of the premises. Owner may record a UCC-1 financing statement to perfect and give notice of its security interest.

#### 6. STATEMENTS AND MINE MAPS

Operator shall make and furnish to Owner on or before the twentieth day of each month during the term of this Agreement, a statement of the amount of coal removed from said coal lands, such statement to be made under the hand and certificate of Operator. Operator shall also make and furnish Owner, at least once each year, an up-to-date mine map of workings on the premises. Operator agrees to keep a true, correct and accurate account of coal removed from the premises, and a true and accurate map of all mines or workings now or hereafter opened or used on the premises. The properly authorized representatives of Owner shall have free and full access to the accounts, books, and records of Operator relating to tonnages of coal removed.

Operator shall furnish Owner with copies of all mining plans within a reasonable time of when said plans are approved by the Utah Division of Oil, Gas and Mining.

7. CONDITION OF PROPERTY

It is expressly understood that the property herein referred to is delivered to Operator in its present as is, where is condition and that Operator is familiar with said property and accepts the same in its present condition and assumes full responsibility for all known or unknown defects.

8. OPERATION OF MINE

Operator shall diligently and continuously operate the subject property for the term hereof unless the operation thereof is prevented by strike, car shortages, government regulation, any act of God, or similar cause beyond the control of Operator, or unless all of the merchantable coal in said premises is sooner extracted, mined and removed. Operator shall conduct all operations hereunder in a good and miner like manner and in a manner which will result in the ultimate maximum economic recovery of coal from the property. Operator shall comply with all governmental, statutory and regulatory requirements applicable to Operator. Any material failure to do so shall be a material breach of this agreement for which Owner may terminate this agreement.

Operator agrees to indemnify and hold Owner harmless from and against any and all damages, claims, costs and expenses arising out of or related in any way to Operator's use or occupation of the property, including but not limited to any caving or subsidence of the surface. Operator agrees to maintain insurance coverage against all such damages, claims and costs, with companies acceptable to Owner, in an amount not less than \$1,000,000, listing Owner as an additional insured.

Operator shall pay all operating expenses for Operator's mining operation, including mining machinery, lumber, timber, permits etc.

Operator shall, in the operation and development of the premises, comply with all applicable Federal, State, and local laws that apply to Operator's mining operation and shall conduct its mining operations and take all actions and perform all duties required to maintain the Federal and State mining permits and approvals relating to the Premises.

Operator shall hold Owner harmless from and against any and all damages, claims, costs, and expenses arising from or growing out of any injuries to, or death of, the employees of

Operator or any other person whomsoever, where such injury, death or damage occurs of or in connections with the possession, use or operation in any manner of the property.

#### 9. SURVEYS AND INSPECTIONS

Owner or its agents may and shall at all reasonable times have free access to said premises and the mine, or mines open thereon, or which may hereafter be opened thereon, and to all workings, thereon for the purpose of determining whether the said property is being maintained, protected, and used in accordance with the terms of this agreement; and for the purpose of checking the tonnage of coal which may be mined and extracted by Operator.

From time to time, Owner may cause a survey of the mine or mines of Operator to be made by some competent engineer selected by Owner for the purpose of checking the statements made by Operator of the coal removed from the premises, and of the amounts paid as royalties by reason thereof and for the purpose of determining the manner in which the mining upon the premises has been or is being performed. Operator may be present, or his duly appointed representative, at the making of any such survey and shall furnish necessary men free of expense to Owner to assist Owner's said engineer in making such a survey.

#### 10. TAXES

Operator shall pay all taxes with respect to Operator's mining operation, equipment, and other property used by Operator.

#### 11. TERMINATION OF AGREEMENT

Upon the termination of this Agreement by expiration, surrender, forfeiture, or any other cause, except by default, Operator shall have the privilege at any time within a period of 6 months thereafter of removing from the premises all machinery, equipment, tools, materials, etc. placed by Operator in or on the premises. If reasonably required, Operator may have an additional period of not more than 6 months within which to remove stockpiled coal and coal dust, subject of course, to the payment of the royalties on any such coal or coal dust so removed.

At Owner's option, any property or improvements remaining on the premises more than six months after termination of this Agreement, shall revert to and become the sole and absolute property of the Owner. However, should Owner elect not to become the owner of any such property or improvement, Owner shall so notify Operator in writing, demanding that Operator remove such items and if not so removed within ten days after notification, Owner may remove or dispose of such property at Operator's expense.

## 12. BANKRUPTCY

For purposes of bankruptcy law, Operator's right to enter upon and occupy Owner's real property is a lease of nonresidential real property. If

- (i) A voluntary or involuntary petition for bankruptcy is filed naming Operator as a bankruptcy debtor, or naming a third party as a bankruptcy debtor on a debt for which Operator is or may be a co debtor, AND
- (ii) Operator's ability to perform any part of this Agreement is adversely effected by
  - (ii)(A) events, acts or omissions however caused, which are related to the reasons for which the bankruptcy petition is filed, OR
  - (ii)(B) the bankruptcy filing itself,

then Owner shall have these rights, each of which is cumulative and independent of the others:

- (a) Owner may treat the bankruptcy filing as an event of default and/or a material breach.
- (b) Owner may give Operator written notice setting thirty days from the notice as the stated term of the lease. At the end of the thirty day period, this Agreement shall expire by the stated term of the lease.
- (c) Upon request by Owner however given, Operator will stipulate to any motion by Owner for relief from the automatic stay.
- (d) Upon request by Owner however given, Operator will reject this Agreement.
- (e) Upon written request by Owner, Operator will stop severing coal from the real property, and/or processing coal on the real property, and/or transporting coal from the real property, and/or engaging in other specified activities on the real property.
- (f) Upon written request by Owner, Operator will surrender the real property to Owner.
- (g) Owner may, upon giving Operator thirty days written notice, revoke Operator's right to enter all or specified parts of Owner's real property, and may block roads, paths, doors, entries and other access to the real property, and use any other lawful means to prevent Operator from entering all or specified parts of the real property,

and may remove any or all of Operator's personal property from Owner's real property.

- (h) Owner may demand payment of all unpaid royalties whether or not presently due, and any other amounts owed by Operator, within thirty days from the demand. If Operator fails to pay as demanded, Owner may terminate this Agreement for nonpayment.
- (i) Owner may reject and refuse to accept or consent to, and may treat as void and as of no force and effect, any voluntary or involuntary assignment or delegation to, and/or any voluntary or involuntary assumption or performance by, any third party of any rights or duties of Operator under this Agreement.
- (j) Operator shall pay, indemnify, defend, and hold Owner harmless from any costs, losses, injuries, expenses, consequential and incidental damages, and third party claims, whether or not foreseeable, arising out of Owner's exercise of any rights under this section 12 of the Agreement.

### 13. DEFAULT

If Operator does not comply with any of the provisions, obligations, covenants, or agreements herein written and contained or with any other agreement between Operator and Owner, and such default shall continue for a period of 30 days after service of written notice, including by e-mail, by Owner identifying the default and specifying with reasonable particularity the nature and extent thereof, then and in such event this Agreement may be terminated and all of the rights of Operator shall cease and be wholly determined and Owner may at once take possession of any or all of the properties herein described.

In the event of such default, Owner shall have the right, but not the obligation to operate the underground coal mining business of Operator. If Owner elects to operate the coal mine business and notifies Operator of its election in writing, Operator agrees that all of Operator's permits, bonds, licenses and approvals shall immediately revert to and become the property of the Owner.

### 14. HEIRS AND SUCCESSORS

Each obligation hereunder shall extend to, and be binding upon, and every benefit hereof shall inure to, the heirs, executors, administrators, successors, or assigns of the respective parties hereto.

15. ASSIGNMENT

Operator's rights hereunder may not be assigned, transferred or conveyed, whether voluntary or involuntary, without Owner's advance written consent, through execution or other judicial process. Any attempted assignment, transfer, or conveyance, whether voluntary or involuntary, to a third party is an event of default and a material breach and shall give Owner the right to cancel this agreement. If Operator is subject to the execution of its assets, this shall be an event of default and a material breach and shall give Owner the right to cancel this agreement.

16. SEVERABILITY

If any part of this agreement is invalid or unenforceable, all remaining parts of the agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

OWNER

C.O.P. Coal Development Company  
53 West Angelo Ave  
Salt Lake City, UT 84115

OPERATOR

Hiawatha Coal Company  
P O Box 1202  
Huntington, UT 84528

By: J.O. Kingston

J.O. Kingston

By: E. O. Finley

E. O. Finley

EXHIBIT A

Page 1 of 3

BEAR CANYON

U-024316                      Issued                      8-1-80

T.16 S., SLM, Utah

Sec 13: W2W2

Sec 14: NE, E2NW

Containing 400 acres, more or less.

U-024318                      Issued                      8-1-80

T.16 S., R.7.E, SLM, Utah

Sec 26: E2NW

Containing 80 acres, more or less.

MORHLAND

U-61048                      Revised                      10-29-92

T 16 S., R. 7 E., SLM, Utah

Sec 1: Lot 1, SENE, E2SE

Sec. 12: E2NE

T 16 S., R. 8E., SLM, Utah

Sec. 6; Lots; Lots 11-14, E2SW, W2SE, SESE

Sec. 7; Lots; 1,2, E2NW, W2NE, SENE, SE

Sec. 8; SWSW

Containing 1,108.27 acres, more or less.



EXHIBIT A

Page 2 of 3

U-61049

Revised:

6-19-2002

Track 1:

T. 16 S., R. 7 E., SLM, Utah  
Sec 1; Lot 2, SWNE, W2SE  
Sec 12; W2NE, E2W2, SE  
Sec 13; E2, E2W2

T. 16 S., R. 8 E., SLM, Utah  
Sec 7; Lots 3,4, E2SW  
Sec 18; Lots 1-4, E2, E2W2  
Sec. 19; SWNE, NWSE  
Sec. 20; SENW, NESW

Track 2:

T 16S, R. 8E., SLM, Utah  
Sec 19: SENE, NESE  
Sec 20: SWNW, NWSW

Containing 2,196.09 more or less

McCADDEN HOLLOW

U-46484      Readjusted: 5-1-88

T. 16 S., R7 E. SLM, Utah  
Sec. 10; N2, N2S2, SESW, S2SE  
Sec. 11; ALL  
Sec. 12; W2W2

Containing 1,400 acres, more or less.

WILD HORSE RIDGE

U-020668      Readjusted 5-1-88

T. 16 S., R. 7 E, SLM, Utah  
Sec. 25: SENE, NESE

T. 16 S., R. 8 E., SLM, Utah  
Sec. 30; Lots. 1-4, W2NE, E2W2, NWSE

Sec. 31; NENW, NWNE

Containing 626.32 acres, more or less

EXHIBIT A

Page 3 or 3

U-038727    Readjusted    5-1-88

T. 16 S., R. 7 E., SLM, Utah

Sec 24; SENE, E2SE

Sec 25; N2NE, SWNE, SWNW, NWSW, W2SE, SESE

T. 16 S., R 8 E., SLM, Utah

Sec. 19; Lots 2-4, SENW, E2SW, SWSE

Containing 740.39 acres, more or less.

FEE GROUND

T. 16S, R. 7E, SLB&M

Section 14: S1/2, W1/2NW1/4

Section 23: ALL

Section 24: W1/2, W1/2, E1/2

Section 25: NW1/4NW1/4, E1/2NW1/4, NE1/4, SW1/4

Section 26: NE1/4

T. 16S, R 8E, SLB&M

Section 7: E1/2NE1/4

Section 8: N1/2SW1/4, SE1/4, SW1/4, W1/2SE1/4

Section 16: W1/2W1/2

Section 17: ALL

Section 19: Lot 1, NE1/4NW1/4, N1/2NE1/4

Section 20: N1/2NW1/4, NE1/4, NE1/4SE1/4